
2007 SUPPLEMENTARY CONDITIONS

SECTION 00800

PART 1 – GENERAL

1.01 DESCRIPTION

A. **Owner:** These supplements are necessary because the Owner is an agency, or political subdivision, of the State of Mississippi and occupies a different position from that of the usual Owner.

B. **Document:** The following supplements modify, change, delete from, or add to the **General Conditions of the Contract**, AIA Document A201, Sixteenth Edition, 2007. When any Article of the **General Conditions** is modified, or deleted, by these *Supplementary Conditions*, the unaltered provisions of that Article, Paragraph, Subparagraph, or Clause will remain in effect.

Article 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 **The Contract Documents:** Delete the last sentence of this Subparagraph and substitute the following sentence:

The Contract Documents include the Advertisement for Bids, Instructions to Bidders, Proposal Form, sample forms and all portions of addenda issued prior to execution of the Contract.

1.1.9 Add a new Subparagraph as follows:

COMMISSIONING AUTHORITY PROFESSIONAL

A professional independent of the project engineer or architect retained by the owner who manages a quality focused process for enhancing the delivery of the project. The process focuses upon verifying and documenting that the facility and all of its systems are planned, designed, installed, tested, operated, and maintained to meet the Owner's project requirements.

1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

1.5.1 Add a new sentence at the end of this Subparagraph:

This Paragraph in no way supersedes the Owner's document rights set forth in the Agreement Between the Owner and the Professional.

1.5.3 Add a new Subparagraph as follows: (Added Sept-Dec 2013)

Transparency. In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this agreement shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.mississippi.gov>

Article 2

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OWNER

2.1 GENERAL

2.1.1 Change this Subparagraph to read as follows:

The Owner, as used in these Documents, refers to the Bureau of Building, Grounds and Real Property Management, acting for and on behalf of the State of Mississippi and for the benefit of the Institution, Agency, or Department for which the Work under this Contract is being performed. The Owner is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner's representative, who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization, is the individual who signed

the Construction Contract for the Owner. Except as otherwise provided in Subparagraph 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.5 Change this Subparagraph to read as follows:

Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary, but in no instance to exceed twenty-five (25) copies, for the execution of the Work.

Article 3 CONTRACTOR

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 Change the last sentence to read as follows:

If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner and Architect shall be responsible for any resulting loss or damage.

3.4 LABOR AND MATERIALS

3.4.4 Modify the Subparagraph as follows: (Modified Sept-Dec 2013)

Employee Status Verification System *If applicable, the Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp 2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Contractor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. The Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. The Contractor understands and agrees that any breach of these warranties may subject the Contractor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to the Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such cancellation/termination, the Contractor would also be liable for any additional costs incurred by the State due to the contract cancellation or loss of license or permit.*

3.4.5 Add a new Subparagraph as follows: (Modified Sept-Dec 2013)

In providing labor for the proper execution and completion of the Work, the Contractor shall comply with the provisions of Section 31-5-17 and Section 31-5-19 of the Mississippi Code of 1972, Annotated.

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3.4.6 Add a new Subparagraph as follows: (Modified Sept-Dec 2013)

In providing materials for the proper execution and completion of the Work, the Contractor shall comply with the provisions of Section 31-5-23 of the Mississippi Code of 1972, Annotated.

3.9 SUPERINTENDENT

3.9.2 Change the second line in this Subparagraph to read as follows:

The Architect shall, within a reasonable time, notify the Contractor in writing of any objection to the proposed superintendent.

3.15 CLEANING UP

3.15.2 Change this Subparagraph to read as follows:

If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

Change this Paragraph to read as follows:

The Contractor shall provide the Owner, Architect, Commissioning Authority Professional, and their authorized representatives access to the Work in preparation and progress wherever located.

3.18 INDEMNIFICATION

3.18.3 Modify the Subparagraph as follows: (Modified Sept-Dec 2013)

***Indemnification** To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi, its Commissioners, Board Members, officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by Contractor's and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or failure to perform this Agreement. In the State's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State; Contractor shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold.*

Article 4
ARCHITECT

4.1 GENERAL

4.1.4 Add a new Subparagraph as follows:

The term "Architect," "Engineer," or "Professional" as used in these Documents refers to the Professional firm indicated in Paragraph 5.3.1 of the Standard Form of Agreement Between the Owner and the Contractor who has been directed by the Owner to design and inspect construction of this Project.

4.2 ADMINISTRATION OF THE CONTRACT

4.2.1 Change the first line of this Subparagraph to read as follows:

The Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's

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representative (1) during construction, (2) until the final payment is due and (3) with the Owner's concurrence, from time to time during the one year period for correction of Work described in Section 12.2.

Article 5

SUBCONTRACTORS

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 5.2.1 Change the first line of this Subparagraph to read as follows: (modified Jan 2015) (see also 600.55; Div 1-01010.1.01.F)

Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, prior to award of the Contract by the Owner, shall furnish in writing to the Owner through the Professional, the names, disciplines, and COR #'s of Sub-Contractors over Fifty Thousand Dollars (\$50,000.00) (as well as entities who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. Such list shall also include any Mechanical, Plumbing, or Electrical Sub-Contractor listed on Proposal Form regardless of amount.

Article 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

No supplementary conditions.

Article 7

CHANGES IN THE WORK

7.2 CHANGE ORDERS

- 7.2.2 Add a new Subparagraph as follows:

The maximum cost included in a Change Order for profit and overhead is limited to twenty percent (20%) of the total of the actual cost for materials, labor and subcontracts. Profit and overhead include: all taxes, fees, permits, insurance, bond, job superintendent, job and home office expense. All Subcontractors shall acquiesce to the same requirements when participating in a Change Order.

7.3 CONSTRUCTION CHANGE DIRECTIVES

- 7.3.9 Delete this Subparagraph in its entirety.

Article 8

TIME

8.1 DEFINITIONS

- 8.1.2 Change this Subparagraph to read as follows:
The date of commencement of the Work is the date established in the Notice to Proceed.

8.3 DELAYS AND EXTENSIONS OF TIME

- 8.3.1 Change this Subparagraph to read as follows:

If the Contractor is delayed at any time in the commencement or progress of the Work by any act of neglect of the Owner or the Architect, or by any employee of either, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or any causes beyond the Contractor's control, or by any other causes which the Architect

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determines may justify the delay, then the Contract Time may be extended by Change Order for such reasonable time as the Architect may determine, subject to the Owner's approval. Any claim for loss or any delay occasioned by any separate Contractor, or Subcontractor, shall be settled between the Contractor and such other separate Contractor, or Subcontractors.

Article 9

PAYMENTS AND COMPLETION

9.2 SCHEDULE OF VALUES

Change this Paragraph to read as follows:

Where the Contract is based on a stipulated sum, the Contractor shall submit to the Architect, at least 10 days before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work, and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 Add a new sentence to the end of this Subparagraph:

The form of Application for Payment will be AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, or a computer generated form containing similar data.

9.3.1.1 Delete this Subparagraph in its entirety.

9.3.1.3 Add a new Clause to Subparagraph 9.3.1 as follows: (see also Manual 700.28) (modified Sept-Dec 2013)

On any contract as described herein, of which the total amount is Two Hundred Fifty Thousand Dollars (\$250,000.00) or greater, or on any contract with a subcontractor, regardless of amount, five percent (5%) shall be retained until the Work is at least fifty percent (50%) complete, on schedule and satisfactory in the architect's and/or engineer's opinion, at which time fifty percent (50%) of the retainage held to date shall be returned, subject to consent of surety, to the prime contractor for distribution to the appropriate subcontractors and suppliers; provided, however, that future retainage shall be withheld at the rate of two and one-half percent (2 1/2%). When submitting request for reduction in retainage, the Contractor will include, with the application, a Consent of Surety to Reduction which is AIA Form G707A, and a Power of Attorney.

9.3.1.4 Add a new Clause to Subparagraph 9.3.1 as follows:

The Contractor must submit each month with this Application for Payment a separate letter stating that he is requesting an extension of time or that he had no need for an extension for that period of time. No payment on a monthly application will be considered due and payable until the letter is received. Complete justification such as weather reports or other pertinent correspondence must be included for each day's request for extension. A Contractor's letter, or statement, will not be considered as adequate justification. The receipt of this request and data by the Owner will not be considered as Owner approval in any way.

9.3.2.1 Add a new Clause to Subparagraph 9.3.2 as follows:

Payment on materials stored at some location other than the building site, may be approved by the Architect and the Owner after the Contractor has submitted the following items:

- .1 An acceptable Lease Agreement between the General Contractor and the owner of the land, or building, where the materials are stored covering the specific area where the materials are located.*
- .2 Consent of Surety, or other acceptable Bond, to cover the materials stored off-site.*

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- .3 All Perils Insurance coverage for the full value of the materials stored off-site.
 - .4 A Bill of Sale from the Manufacturer to the General Contractor for the stored materials.
 - .5 A complete list and inventory of materials manufactured, stored and delivered to the storage site and of materials removed from the storage site and delivered to the job site.
 - .6 A review by the Architect of the materials stored off-site prior to release of payment.
 - .7 Guarantee no storage costs, additional delivery fees, or subsequent costs to the Owner.

9.5 **DECISIONS TO WITHHOLD CERTIFICATION**

9.5.3 Delete this Subparagraph in its entirety.

9.6 **PROGRESS PAYMENTS**

9.6.2 Change the first line of this Subparagraph to read as follows:

The Contractor shall pay each Subcontractor, in accordance with Section 31-5-27 of the Mississippi Code 1972, Annotated, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work.

9.6.8 Add a new Subparagraph as follows:

The amount retained by the Contractor from each payment to each Subcontractor and material supplier will not exceed the percentage retained by the Owner from the Contractor.

9.6.8.1 Add a new Clause to Subparagraph 9.6.8 as follows:

The Contractors shall submit monthly certification, in accordance with Section 31-5-25 of the Mississippi Code 1972, Annotated, on Owner's "Affidavit Certifying Payment to All Subcontractors" form, to the project engineer or architect indicating payments to subcontractors on prior payment request. (attached as Exhibit "A" at the end of Division 0 Section 00800 herein)

9.6.9 Modify the Subparagraph as follows: (Modified Sept-Dec 2013; SAAS modified 092414)

The DFA agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the Mississippi Code of 1972, as amended, which generally provides for payment of undisputed amounts within forty-five (45) days of receipt of the invoice. The State requires the Contractor to submit invoices electronically throughout the term of the agreement. Vendor invoices shall be submitted to the state agency using the processes and procedures identified by the State. Payments by state agencies using the statewide electronic payment and remittance vehicle shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Contractor shall remain responsible and liable for full performance.

E-payments will continue but the Bureau of Building, Grounds and Real Property Management received a Waiver for the underlined sentence above dated June 13, 2009, for the e-invoice / electronic invoice, and said waiver is recorded in the Bureau General Business Minutes.

9.7 **FAILURE OF PAYMENT**

Change this Paragraph to read as follows:

The Contractor and the Owner shall be subject to the remedies as prescribed in Section 31-5-25 of the Mississippi Code 1972, Annotated.

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9.8 SUBSTANTIAL COMPLETION

9.8.1 Add the following sentence to the end this Subparagraph to read as follows:

Commissioning requirements must be complete except for thermographs of electrical systems, trend log monitoring, seasonal testing, near-warranty end activities and verification of training sessions.

9.8.4 Change the first line this Subparagraph to read as follows:

When the Work or designated portion thereof is substantially complete and affirmed by the Owner, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Change this Subparagraph to read as follows:

When, in the opinion of the Contractor, the Work is ready for final inspection and acceptance by the Owner, the Contractor shall make such notice to the Architect in writing.

- 1. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance by the Owner, the Architect will promptly inspect the Work and compile a list of deficiencies. If, in the Architect's judgment, the Work is not ready for inspection, another inspection will be scheduled.*
- 2. Once the Architect has made inspection and all deficiencies listed by the Architect have been corrected and the Architect determines the Work is ready for final inspection, the Architect will call for final inspection of the Project with the Owner for the purpose of determining whether the Work is acceptable under the Contract Documents.*
- 3. The final inspection shall be conducted in the presence of the Owner and a list of defects or discrepancies, if any, will be compiled into a punch list furnished to all parties.*
- 4. Once corrections of all punch list items have been confirmed by the Architect, the Architect will provide a letter recommending final acceptance of the Work to the Owner.*

9.10.2 Change this Subparagraph to read as follows:

Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) final application for payment, (2) consent of surety to final payment, (3) power of attorney, (4) Contractor's affidavit of release of liens, (5) Contractor's affidavit of payment of debts and claims, (6) Contractor's guarantee of work, (7) Project Record Documents and (8) certificates, warranties, guarantees, bonds or documents as called for in the individual sections of the Project Manual.

9.11 LIQUIDATED DAMAGES

9.11.1 Add a new Paragraph as follows:

Time being of the essence and a matter of material consideration thereof, a reasonable estimate in advance is established to cover losses incurred by the Owner if the project is not substantially complete on the date set forth in the Contract Documents. The Contractor and his Surety will be liable for and will pay the Owner the sums stipulated in Paragraph 2.2 of the Standard Form of Agreement Between the Owner and the Contractor as fixed and agreed as liquidated damages for each calendar day of delay until the work is substantially complete unless circumstances dictate otherwise in the discretion of the Owner.

Article 10
PROTECTION OF PERSONS AND PROPERTY

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.5 Change this Subparagraph to read as follows:

The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible for Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.3 HAZARDOUS MATERIALS

10.3.2 Delete this Subparagraph in its entirety.

10.3.3 Delete this Subparagraph in its entirety.

10.3.4 Delete this Subparagraph in its entirety.

10.3.5 Delete this Subparagraph in its entirety.

10.3.6 Delete this Subparagraph in its entirety.

Article 11
INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.4 Delete this Subparagraph in its entirety.

11.1.5 Add a new Subparagraph as follows: Modified 11.1.5.1 BI and PD on 030116 per Code 31-5-51(7) and 31-7-13(v)

The Contractor's limits of liability shall be written for not less than the following:

.1 GENERAL LIABILITY:

Commercial General Liability

(Including XCU)

<i>General Aggregate.....</i>	<i>\$ 1,000,000.00 Aggregate</i>
<i>Products & Completed Operations</i>	<i>\$ 1,000,000.00 Aggregate</i>
<i>Personal & Advertising Injury.....</i>	<i>\$ 500,000.00 Per Occurrence</i>
<i>Bodily Injury & Property Damage</i>	<i>\$ 1,000,000.00 Per Occurrence</i>
<i>Fire Damage Liability</i>	<i>\$ 50,000.00 Per Occurrence</i>
<i>Medical Expense.....</i>	<i>\$ 5,000.00 Per Person</i>

.2 OWNERS & CONTRACTORS PROTECTIVE LIABILITY:

<i>Bodily Injury & Property Damage</i>	<i>\$ 1,000,000.00 Aggregate</i>
<i>Bodily Injury & Property Damage</i>	<i>\$ 500,000.00 Per Occurrence</i>

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.3 AUTOMOBILE LIABILITY:

(Owned, Non-owned & Hired Vehicles)

Contractor Insurance Option Number 1:

Bodily Injury & Property Damage \$ 500,000.00 Per Occurrence
(Combined Single Limit)

Contractor Insurance Option Number 2:

Bodily Injury \$ 250,000.00 Per Person

Bodily Injury \$ 500,000.00 Per Accident

Property Damage..... \$ 100,000.00 Per Occurrence

.4 EXCESS LIABILITY:

(Umbrella on projects over \$500,000)

Bodily Injury & Property Damage \$ 1,000,000.00 Aggregate
(Combined Single Limit)

.5 WORKERS' COMPENSATION:

(As required by Statute)

EMPLOYERS' LIABILITY:

Accident..... \$ 100,000.00 Per Occurrence

Disease \$ 500,000.00 Policy Limit

Disease \$ 100,000.00 Per Employee

.6 PROPERTY INSURANCE:

Builder's Risk \$ Equal to Value of Work
or

Installation Floater \$ Equal to Value of Work

11.1.6 Add a new Subparagraph as follows:

Furnish one (1) copy of the Standard Construction Contract Certificate of Insurance Form for each copy of the Standard Form of Agreement Between Owner and Contractor specifically setting forth evidence of all coverage required by Subparagraphs 11.1.1, 11.1.2 and 11.1.3. Furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.

11.1.7 Add a new Subparagraph as follows:

If the coverages are provided on a claims-made basis, the policy date or retroactive date shall predate the Contract; the termination date, or the policy, or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment.

11.2 OWNER'S LIABILITY INSURANCE

Delete this Paragraph in its entirety and substitute the following:

The Contractor shall purchase and maintain such insurance as will protect the Owner from his contingent liability to others for damages because of bodily injury, including death, and property damage, which may arise from operations under this Contract and other liability for damages which the Contractor is required to insure under any provision of this Contract. Certificate of this insurance will be filed with the Owner and will be the same limits set forth in 11.1.5.

11.3 PROPERTY INSURANCE (BUILDER'S RISK OR INSTALLATION FLOATER)

11.3.1 Change the first line in this Subparagraph to read as follows:

The Contractor shall purchase....

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11.3.1.2 Delete this Clause under Subparagraph 11.3.1 in its entirety.

11.3.1.3 Change the following Clause in this Subparagraph to read as follows:

If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

11.3.2 Delete this Subparagraph in its entirety.

11.3.3 Delete this Subparagraph in its entirety.

11.3.4 Delete this Subparagraph in its entirety.

11.3.5 Delete this Subparagraph in its entirety.

11.3.6 Delete this Subparagraph in its entirety.

11.3.10 Change this Subparagraph to read as follows:

The Owner as fiduciary shall have power to adjust and settle a loss with Insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss.

Article 12

UNCOVERING AND CORRECTION OF WORK

No supplementary conditions.

Article 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

Change this Paragraph to read as follows:

The Contract shall be governed by the laws of the State of Mississippi.

13.5 TESTS AND INSPECTIONS

13.5.1 Change the third line of this Subparagraph by adding “and Commissioning Authority Professional” after each instance of the word “Architect”.

13.5.3 Change this Subparagraph by inserting “and the Commissioning Authority Professional’s” after the word “Architect”.

13.5.5 Change this Subparagraph by adding “and/or the Commissioning Authority Professional” after each instance of the word “Architect”.

13.7 Change this Paragraph title and contents to read as follows: (modified Sept-Dec 2013)

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 *The Owner and Contractor shall commence all claims and causes of action within the time period specified by applicable state law.*

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TERMINATION OR SUSPENSION OF THE CONTRACT

No supplementary conditions.

Article 15 **CLAIMS AND DISPUTES**

15.2 INITIAL DECISION

15.2.1 Change this Subparagraph to read as follows:

Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker. An initial decision by the Initial Decision Maker shall be required as a condition precedent to arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered by the Initial Decision Maker. The Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

15.2.5 Change the last line of this Subparagraph to read as follows:

The initial decision shall be final and binding on the parties but subject to arbitration or litigation.

15.2.6 Delete this Subparagraph in its entirety.

15.2..6.1 Delete this Clause in its entirety.

15.3 MEDIATION

15.3.1 Delete this Subparagraph in its entirety.

15.3.2 Delete this Subparagraph in its entirety.

15.3.3 Delete this Subparagraph in its entirety.

15.4 ARBITRATION

15.4.1 Delete this Subparagraph in its entirety.

15.4.1.1 Delete this Clause in its entirety.

15.4.1.2 Delete this Clause in its entirety.

15.4.2 Delete this Subparagraph in its entirety.

15.4.3 Delete this Subparagraph in its entirety.

15.4.4 Delete this Subparagraph in its entirety.

15.5 Add a new Paragraph as follows:

ARBITRATION PROCEDURES FOR THE DEPARTMENT OF FINANCE AND ADMINISTRATION'S BUREAU OF BUILDING, GROUNDS AND REAL PROPERTY MANAGEMENT

All matters of dispute arising out of any agreement with the Department of Finance and Administration for planning, design, engineering, construction, erection, repair, or alteration of any building, structure, fixture, road, highway, utility or any part

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thereof, or any agreement with the Department of Finance and Administration for architectural, engineering, surveying, planning, and related professional services which provides for mediation or arbitration, shall comply with the following course for resolution. No arbitration hearing shall be granted on any claim in excess of One Hundred Thousand Dollars (\$100,000.00).

15.5.1 Add a new Subparagraph as follows:

CONDITIONS PRECEDENT TO ARBITRATION

- .1 The aggrieved party must first notify opposing party in writing in detail of the matter(s) in dispute the amount involved and the remedy sought. Such writing shall include copies of any documents, writings, plans, or other matter pertinent to the resolution of the dispute. The Director of the Bureau of Building and a principal of the opposing party shall be the proper parties for such notice and shall be active parties in any subsequent dispute resolution.*
- .2 If the dispute cannot be satisfactorily resolved, within thirty (30) days of the complaint being rejected in writing by either party, notice by certified mail shall be given to the Deputy Director of the Department of Finance and Administration. A copy of the notice shall be sent by certified mail to the opposing party. Such notice shall be in writing setting forth in detail the matter(s) in dispute, the amount involved, the remedy sought and state that informal resolution between the parties cannot be reached. Such writing shall include copies of any documents, writings, plans, or other matter pertinent to the resolution of the dispute. Opposing party shall have the opportunity to set forth in writing a rebuttal with pertinent documents attached. At the sole discretion of the Deputy Director, oral testimony may be had on the matter.*

15.5.2 Add a new Subparagraph as follows:

REQUESTS FOR ARBITRATION: *Within thirty (30) days of a claim being rejected in writing by the Deputy Director of the Department of Finance and Administration, either party may request arbitration. Notices for requests for arbitration shall be made in writing to the Executive Director of the Department of Finance and Administration, P.O. Box 267, Jackson, MS 39201. Such notice shall set forth in detail the matter(s) in dispute, the amount involved, and the remedy sought. A copy of the request shall be mailed to the opposite party. The party requesting arbitration must deposit the sum of two hundred (\$200.00) with its request as a deposit against costs incurred by the arbitrators. Each party will be notified in writing in any manner provided by law of certified mail not less than twenty (20) days before the hearing of the date, time and place for the hearing. Appearance at the hearing waives a party's right to notice.*

15.5.3 Add a new Subparagraph as follows:

SELECTION OF ARBITRATORS: *Upon request for arbitration, a panel of three (3) arbitrators shall be chosen. One (1) member shall be appointed by the Executive Director of the Department of Finance and Administration. One (1) member shall be appointed by the executive director of a professional or trade association which represents interests similar to that of the non-state party. The third member shall be appointed by the first two.*

15.5.4 Add a new Subparagraph as follows:

HEARINGS: *All hearings shall be open to the public. All hearings will be held in Jackson, Mississippi, unless another location is mutually agreed to by the parties. The hearings shall be conducted as prescribed by **Mississippi Code 1972, Annotated**, Sections 11-15-113, 11-15-115, and 11-15-117. A full and complete record of all proceedings shall be taken by a certified court reporter. The scheduling and cost of retaining the court reporter shall be the responsibility of the party requesting arbitration. The costs of transcription of the record shall be the responsibility of the party requesting such transcript. No arbitration hearing shall be held without a certified court reporter. Deliberations of the arbitrators shall not be part of the record.*

15.5.5 Add a new Subparagraph as follows:

AWARDS: *Awards shall be made in writing and signed by the arbitrators joining in the award. A copy of the award shall be delivered to the parties by certified mail.*

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15.5.6 Add a new Subparagraph as follows:

FEES AND EXPENSES: *Reasonable fees and expenses, excluding counsel fees, incurred in the conduct of the arbitration shall be at the discretion of the Arbitrator except each party shall bear its own attorney's fees and costs of expert witnesses.*

15.5.7 Add a new Subparagraph as follows:

MODIFICATIONS, CONFIRMATIONS, AND APPEALS: *All modifications, confirmations and appeals shall be as prescribed by **Mississippi Code 1972, Annotated**, Section 11-15-123 et seq. All awards shall be reduced to judgment and satisfied in the same manner other judgments against the State are satisfied.*

15.5.8 Add a new Subparagraph as follows:

SECRETARY FOR THE ARBITRATORS: *All notices, requests, or other correspondence intended for the arbitrators shall be sent to Executive Director, Department of Finance and Administration, P.O. Box 267, Jackson, MS 39201.*

**AFFIDAVIT CERTIFYING
PAYMENT TO ALL SUBCONTRACTORS**

Department of Finance and Administration
Bureau of Building, Grounds and Real Property Management

I acknowledge that, pursuant to Miss. Code Ann. §31-5-25 and H.B. 1562, Laws of 2002, that I am required to submit monthly certification indicating payments to subcontractors on prior payment requests. I, the undersigned Contractor, do hereby certify that I have paid the following amounts to subcontractors for Work which has been performed and incorporated into previous Applications for Payment which were issued and payment received from the Owner on the project listed below. I understand that this document must be submitted on a monthly basis after the submittal, approval and payment of Application for Payment #1. I understand that the Bureau of Building reserves the right to require me, the undersigned, to provide verification of payment and/ or additional information.

Division 0

Section 00800 SUPPLEMENTARY CONDITIONS
Article 9.6 Progress Payments
Article 9.6.8.1

Pursuant to Code §31-5-25 and HB1562, Laws of 2002
...Contractors shall submit monthly certification to the project engineer or architect indicating payments to subcontractors on prior payment request. . . .

Project Name and Number: _____

Using Agency: _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Page 2 of 2
DFA/Bureau of Building
Affidavit Certifying Payment Form

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

Subcontractor: _____ Amount: \$ _____

(Attach additional list of subcontractors and amounts, if necessary)

Contractor Name and Title: _____

Contractor Certificate of Responsibility Number: _____

Contractor Signature: _____ Date: _____

STATE OF MISSISSIPPI

COUNTY OF _____

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned notary public,
this the _____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires:

Division 0